

(ii) The State finds that a NF or a dually participating facility is in substantial compliance with the participation requirements.

(3) When HCFA's survey findings take precedence, HCFA may—

(i) Impose any of the alternative remedies specified in § 488.406;

(ii) Terminate the provider agreement subject to the applicable conditions of § 488.450; and

(iii) Stop FFP to the State for a NF.

(b) *Disagreement over decision to terminate.* (1) HCFA's decision to terminate the participation of a facility takes precedence when—

(i) Both HCFA and the State find that the facility has not achieved substantial compliance; and

(ii) HCFA, but not the State, finds that the facility's participation should be terminated. HCFA will permit continuation of payment during the period prior to the effective date of termination not to exceed 6 months, if the applicable conditions of § 488.450 are met.

(2) The State's decision to terminate a facility's participation and the procedures for appealing such termination, as specified in § 431.153(c) of this chapter, takes precedence when—

(i) The State, but not HCFA, finds that a NF's participation should be terminated; and

(ii) The State's effective date for the termination of the NF's provider agreement is no later than 6 months after the last day of survey.

(c) *Disagreement over timing of termination of facility.* The State's timing of termination takes precedence if it does not occur later than 6 months after the last day of the survey when both HCFA and the State find that—

(1) A facility is not in substantial compliance; and

(2) The facility's participation should be terminated.

(d) *Disagreement over remedies.* (1) When HCFA or the State, but not both, establishes one or more remedies, in addition to or as an alternative to termination, the additional or alternative remedies will also apply when—

(i) Both HCFA and the State find that a facility has not achieved substantial compliance; and

(ii) Both HCFA and the State find that no immediate jeopardy exists.

(2) *Overlap of remedies.* When HCFA and the State establish one or more remedies, in addition to or as an alternative to termination, only the HCFA remedies apply when both HCFA and the State find that a facility has not achieved substantial compliance.

(e) Regardless of whether HCFA's or the State's decision controls, only one noncompliance and enforcement decision is applied to the Medicaid agreement, and for a dually participating facility, that same decision will apply to the Medicare agreement.

#### § 488.454 Duration of remedies.

(a) Except as specified in paragraphs (b) and (d) of this section, alternative remedies continue until—

(1) The facility has achieved substantial compliance, as determined by HCFA or the State based upon a revisit or after an examination of credible written evidence that it can verify without an on-site visit; or

(2) HCFA or the State terminates the provider agreement.

(b) In the cases of State monitoring and denial of payment imposed for repeated substandard quality of care, remedies continue until—

(1) HCFA or the State determines that the facility has achieved substantial compliance and is capable of remaining in substantial compliance; or

(2) HCFA or the State terminates the provider agreement.

(c) In the case of temporary management, the remedy continues until—

(1) HCFA or the State determines that the facility has achieved substantial compliance and is capable of remaining in substantial compliance;

(2) HCFA or the State terminates the provider agreement; or

(3) The facility which has not achieved substantial compliance re-assumes management control. In this case, HCFA or the State initiates termination of the provider agreement and may impose additional remedies.

(d) In the case of a civil money penalty imposed for an instance of non-compliance, the remedy is the specific amount of the civil money penalty imposed for the particular deficiency.

## § 488.456

(e) If the facility can supply documentation acceptable to HCFA or the State survey agency that it was in substantial compliance and was capable of remaining in substantial compliance, if necessary, on a date preceding that of the revisit, the remedies terminate on the date that HCFA or the State can verify as the date that substantial compliance was achieved and the facility demonstrated that it could maintain substantial compliance, if necessary.

[59 FR 56243, Nov. 10, 1994; 60 FR 50119, Sept. 28, 1995, as amended at 64 FR 13361, Mar. 18, 1999]

### § 488.456 Termination of provider agreement.

(a) *Effect of termination.* Termination of the provider agreement ends—

- (1) Payment to the facility; and
- (2) Any alternative remedy.

(b) *Basis for termination.* (1) HCFA and the State may terminate a facility's provider agreement if a facility—

(i) Is not in substantial compliance with the requirements of participation, regardless of whether or not immediate jeopardy is present; or

(ii) Fails to submit an acceptable plan of correction within the time-frame specified by HCFA or the State.

(2) HCFA and the State terminate a facility's provider agreement if a facility—

(i) Fails to relinquish control to the temporary manager, if that remedy is imposed by HCFA or the State; or

(ii) Does not meet the eligibility criteria for continuation of payment as set forth in § 488.412(a)(1).

(c) *Notice of termination.* Before terminating a provider agreement, HCFA does and the State must notify the facility and the public—

(1) At least 2 calendar days before the effective date of termination for a facility with immediate jeopardy deficiencies; and

(2) At least 15 calendar days before the effective date of termination for a facility with non-immediate jeopardy deficiencies that constitute noncompliance.

(d) *Procedures for termination.* (1) HCFA terminates the provider agreement in accordance with procedures set forth in § 489.53 of this chapter; and

## 42 CFR Ch. IV (10–1–00 Edition)

(2) The State must terminate the provider agreement of a NF in accordance with procedures specified in parts 431 and 442 of this chapter.

## PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

### Subpart A—General Provisions

Sec.

489.1 Statutory basis.

489.2 Scope of part.

489.3 Definitions.

489.10 Basic requirements.

489.11 Acceptance of a provider as a participant.

489.12 Decision to deny an agreement.

489.13 Effective date of agreement or approval.

489.18 Change of ownership or leasing: Effect on provider agreement.

### Subpart B—Essentials of Provider Agreements

489.20 Basic commitments.

489.21 Specific limitations on charges.

489.22 Special provisions applicable to prepayment requirements.

489.23 Specific limitation on charges for services provided to certain enrollees of fee-for-service FEHB plans.

489.24 Special responsibilities of Medicare hospitals in emergency cases.

489.25 Special requirements concerning CHAMPUS and CHAMPVA programs.

489.26 Special requirements concerning veterans.

489.27 Beneficiary notice of discharge rights.

489.28 Special capitalization requirements for HHAs.

### Subpart C—Allowable Charges

489.30 Allowable charges: Deductibles and coinsurance.

489.31 Allowable charges: Blood.

489.32 Allowable charges: Noncovered and partially covered services.

489.34 Allowable charges: Hospitals participating in State reimbursement control systems or demonstration projects.

489.35 Notice to intermediary.

### Subpart D—Handling of Incorrect Collections

489.40 Definition of incorrect collection.

489.41 Timing and methods of handling.

489.42 Payment of offset amounts to beneficiary or other person.